Filed 4/21/15 In re C.R. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re C.R., a Person Coming Under the Juvenile Court Law.	H041334 (Santa Clara County Super. Ct. No. 113-JD021997)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	

M.M. (father), the presumed father of C.R. (child), appeals after the juvenile court ordered the Department of Family and Children's Services (Department) to provide him with seven weeks of reunification services. On appeal, father argues he is entitled to a minimum of six months of reunification services.

For the reasons set forth below, we conclude the court did not abuse its discretion when it ordered the Department to provide father with seven weeks of reunification services. Contrary to father's claims, there is no statutorily required minimum amount of reunification services that must be ordered by a juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2013, child (born 2013) and her mother, A.G. (mother), tested positive for methamphetamines. Mother's partner at the time, W.R., requested a paternity test

because he was unsure if he was child's father. Mother had two older children who had also tested positive for methamphetamines when born and had been made dependents of the court. Mother had a criminal history and had previously been arrested for being under the influence of a controlled substance and for second degree burglary. In an interview with the Department, mother said she wished to become clean and sober so she could care for child.

On July 29, 2013, the Department filed a petition alleging child came within the provisions of Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).[1] The petition asserted child was at risk because of mother and W.R.'s drug use. The Department requested and obtained a protective custody warrant (§ 340) for child. Child was temporarily placed with her maternal great-grandmother.

On August 1, 2013, the juvenile court held an initial hearing (§ 319) on the petition. Mother and W.R. were not present. The court ordered the Department to arrange a paternity test for W.R. The Department reported that mother and W.R. were avoiding contact with the agency, and they had possibly relocated to Los Angeles. The juvenile court concluded a prima facie showing that child came within the provisions of section 300 had been made and ordered her detained.

Two months later, the Department filed its jurisdiction/disposition report recommending the juvenile court sustain the section 300 petition and not offer services to mother or W.R. The maternal great-grandmother reported that mother and W.R. were residing in Lancaster, California, and she was not aware if the two had plans to return to Santa Clara County. Mother and W.R. had not maintained contact with the Department. At one point, W.R. called the social worker and sought to arrange a meeting with mother

[1] Further unspecified statutory references are to the Welfare and Institutions Code.

to discuss child's case. W.R. rescheduled the appointment, and at the rescheduled time, neither W.R. nor mother showed up to meet with the social worker. The social worker had attempted to contact W.R. to set up paternity testing to no avail. The Department recommended the court order a plan of adoption for child, who remained with maternal relatives.

Approximately a week later, the Department filed an addendum report. The report indicated the social worker had still failed to make contact with mother and W.R. Child was staying with her maternal aunt, Y.C., and her husband, C.R. Y.C. and C.R. stated they would like to be a concurrent home for child.

On October 9, 2013, the juvenile court held a jurisdiction and disposition hearing. The court bypassed services for both mother and W.R. and found the allegations in the section 300 petition true. The court found the date of child's entry into foster care to be September 29, 2013. The court also set a section 366.26 hearing.

On December 18, 2013, the Department filed a section 388 petition requesting W.R. be excluded as the biological father, because he had completed a DNA test which confirmed he was not child's father. On January 9, 2014, the juvenile court granted the petition.

A month later, the juvenile court held an initial section 366.26 hearing. Mother was incarcerated at the time and was transported to the hearing. Mother disclosed that father, M.M., was potentially child's father. Mother said she had written to father about child, but had not received a response. She had not contacted him earlier because she did not "want him in the picture." The court continued the hearing and ordered paternity testing for both father and R.S., another individual mother identified could be child's father.

On March 27, 2014, the juvenile court put the matter on calendar to discuss paternity issues. DNA testing results had established father was child's biological father. Father was appointed counsel to represent him in the proceedings.

The Department submitted an addendum report that detailed father's criminal history, which included multiple convictions related to controlled substances. At the time the report was prepared, father was in custody for allegedly committing a hit and run.

On April 9, 2014, the court excluded R.S. as child's father and found father to be child's legal and biological father. Father was ordered back for the next section 366.26 hearing.

On May 27, 2014, father filed a motion to establish presumed father status and to receive services. Father asserted he had first heard about the dependency proceedings in January 2014 after mother contacted him. Father previously lived with mother for approximately three years and had financially supported her during that time. Mother was pregnant during part of the time they lived together, but she had told father that W.R. may be the child's father. Father said he tried to contact mother in the interim but was unsuccessful.

The Department filed a report in support of father being granted presumed father status and being provided with reunification services. In an interview with the Department, mother had indicated she did not believe father was child's biological father because they had been in an on-and-off-again relationship. She also thought father was violent.

The Department's report described father's hit and run offense, which was the subject of his pending criminal charges. It was alleged that father ran a stop sign and struck an 80-year-old pedestrian in a crosswalk. The man suffered two broken legs, a fractured pelvis, an avulsion above his eye, and multiple abrasions. Father did not stop to aid the pedestrian after the accident, and a passenger in father's car believed he was under

the influence of phencyclidine at the time. The passenger approached father after reading about the accident in the news, and father threatened that he would have to "take her out" and "kill her" if she said anything about his involvement in the hit and run. Father did not have a driver's license and did not have permission to drive the car involved in the hit and run.

On July 3, 2014, the juvenile court found father to be child's presumed father. The section 366.26 hearing was set.

The following month, the juvenile court held a contested hearing. Father was still in custody at the time but was transported to the court for the hearing. The Department requested the court vacate the section 366.26 hearing and order reunification services for father until the 12-month review hearing. Father opposed and requested he be given a minimum of six months of reunification services.

The juvenile court agreed with the Department, ordering reunification services for father up until the 12-month review hearing. This amounted to approximately seven weeks of services for father, as the hearing was set for September 29, 2014. The court indicated that at the 12-month review hearing it would determine if there was a substantial probability that child would be turned over to father's care by the 18-month review hearing. If so, it would be willing to order additional reunification services. The section 366.26 hearing was vacated.

Father appealed.

DISCUSSION

Father argues the juvenile court erred when it only ordered the Department to provide him with approximately seven weeks of reunification services, up until the 12-month review hearing. He insists the court should have ordered a minimum of six months of reunification services, vacated the 12-month review hearing, and set the matter for a six-month review hearing to evaluate father's progress.

1. *The 12-Month Review Hearing*

As a preliminary matter, we note the 12-month review hearing was scheduled to take place in September 2014. We requested supplemental briefing from the parties and asked them if this hearing had already taken place, and if so, whether the hearing had an impact on this appeal.

As it turns out, the 12-month review hearing was continued to January 2015. During the hearing, the juvenile court found father had received reasonable services from the Department, terminated his reunification services, and set the matter for a section 366.26 hearing.[2] Father challenged the order setting the section 366.26 hearing by way of extraordinary writ (Cal. Rules of Court, rule 8.452). In an opinion filed on this same date, we denied father's writ petition after determining substantial evidence supported the court's finding that father received reasonable services.[3]

"When no effective relief can be granted, an appeal is moot and will be dismissed." (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315.) However, "an earlier appeal arising out of a juvenile court depending proceeding is not moot *if* the purported error is of such magnitude as to infect the outcome of the ensuing termination action *or* where the alleged defect undermines the juvenile court's jurisdictional finding." (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.)

---

[2] The Department's supplemental brief came with a request for judicial notice of either selected documents taken from the appellate record of the writ proceedings or of the entire appellate record of the writ proceedings in case No. H041841. Father has also filed a request for judicial notice of several documents pertaining to case No. H041841. We grant the Department and father's requests and take judicial notice of the record in case No. H041841.

[3] Father's claim in his writ petition was that the court erred in finding he received reasonable services. His argument here, though similar, is unrelated. Here, father argues in part that seven weeks of reasonable services is per se unreasonable, and the court was statutorily required to order him a minimum of six months of reunification services.

Here, father claims the 12-month review hearing does not render this current appeal moot, because effective relief can still be granted. Additionally, the limitation of his reunification services is important to the later decision of whether to terminate his parental rights. We agree and proceed to address the merits of his claims.

2. *Standard of Review*

On appeal, we will only reverse a juvenile court's determination regarding the provision of reunification services for an abuse of discretion. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

3. *Overview of Statutory Dependency Timelines and Reunification Services*

The Welfare and Institutions Code sets forth the statutory timelines for dependency proceedings. Section 361.5, subdivision (a), provides in pertinent part: "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." Section 361.5, subdivision (a)(1)(B) provides that "[f]or a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of section 366.21, but no longer than 12 months from the date the child entered foster care as provided in Section 361.49 unless the child is returned to the home of the parent or guardian."

Section 361.5, subdivision (a)(3) states in part that "[n]otwithstanding subparagraphs (A), (B), and (C) of paragraph (1), court-ordered services may be extended up to the maximum time period not to exceed 18 months after the date the child was

originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to section (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian."

"The importance of reunification services in the dependency system cannot be gainsaid. The law favors reunification whenever possible. [Citation.] To achieve that goal, ordinarily a parent must be granted reasonable reunification services. [Citation.] But reunification services constitute a benefit; there is no constitutional ' "entitlement" ' to those services." (*In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1242.)

4. *Father's Arguments*

First, we reject father's argument that he is entitled to a minimum of six months of reunification services.

As a presumed father, father was entitled to greater rights than a mere natural father. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449.) Section 361.5, subdivision (a) mandates that "whenever a child is removed from a parent's or guardian's custody, the juvenile court *shall order* the social worker to provide child welfare services to the child and the child's mother and *statutorily presumed father* or guardians." (Italics added.) Because the juvenile court found that father was child's presumed father, father was entitled to reunification services.[4]

[4] However, a juvenile court can bypass reunification services to a presumed father or mother if certain criteria are met. (§ 361.5, subd. (b).) Here, the juvenile court did not elect to bypass services to father.

However, father was not entitled to a minimum of six months of reunification services. Appellate courts have interpreted section 361.5 to provide a *maximum*, not a *minimum*, period of six months of reunification services when a child is under three years old. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009, fn. 4; *In re Aryanna C.*, *supra*, 132 Cal.App.4th at p. 1242.) Although a parent typically receives at least six months of reunification services due to the congested nature of court calendars, a parent "is not *entitled* to a prescribed minimum period of services. It remains within the discretion of the juvenile court to determine whether continued services are in the best interests of the minor, or whether those services should be ended at some point before six months have elapsed." (*In re Aryanna C.*, *supra*, at p. 1243, fn. omitted.)

Additionally, we disagree with father that the juvenile court had the discretion to set aside the 12-month review hearing and instead set a six-month review hearing. The timeline for a dependency proceeding is not linked to a presumed father's knowledge of the child's existence. Neither is the period for reunification services reset when a late-appearing presumed parent begins to participate in the proceedings.

Section 366.21, subdivision (f) provides in pertinent part that: "[t]he permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49." Child entered foster care on September 29, 2013. Therefore, the juvenile court did not err when it concluded it needed to set the permanency hearing 12 months later on September 29, 2014.

However, father continues to maintain that dependency timelines are flexible, even though the language in section 366.21, subdivision (f), is mandatory, not permissive. He asserts "the limits on services are not etched in stone and the juvenile court always retains its discretion to make whatever orders are necessary."

In support of this proposition, father points to various cases that he claims demonstrate the flexibility of the dependency system's timelines. He cites to *In re Jacob*

P. (2007) 157 Cal.App.4th 819, 825, *In re Dani R*. (2001) 89 Cal.App.4th 402, 404, *In re Elizabeth R*. (1995) 35 Cal.App.4th 1774, 1786-1799, and *In re Jonathan P*. (2014) 226 Cal.App.4th 1240, 1259. However, these cases do not support father's position. First, these cases arise from different procedural postures--where a parent filed a section 388 petition after disposition arguing changed circumstances warranted the grant of reunification services. *Jacob P*., *Dani R*., *Elizabeth R*., and *Jonathan P*. illustrate that a juvenile court does not err if it grants reunification services after the permanency plan hearing, provided that the parent seeking reunification services meets the burden of proving such services are in the best interests of the child under section 388. Additionally, these cases do not discuss whether a presumed parent is entitled to a minimum amount of services, or if a juvenile court may vacate a 12-month review hearing and set a new six-month review hearing.

Father also relies on *In re Baby Boy V*. (2006) 140 Cal.App.4th 1108 (*Baby Boy V*.) to support his claims. The child in *Baby Boy V*. was born to a drug addicted mother and an unknown father. (*Id*. at p. 1110.) Approximately eight months after the child was put in foster care, the father learned of the child's existence, went to see a social worker, and asked for a paternity test. (*Ibid*.) Despite the father's request, the juvenile court continued with the planned section 366.26 hearing and found no reason not to terminate parental rights. (*Baby Boy V*., *supra*, at p. 1115.) The father appealed, arguing that he was entitled to presumed father status and to reunification services. (*Id*. at p. 1117.) The appellate court agreed, finding there was nothing in the record to indicate father was an unfit parent. (*Id*. at p. 1118.) Therefore, the court concluded father was entitled to reunification services and visitation. (*Ibid*.) In its disposition, the juvenile court was directed to "consider anew all issues about the appropriate permanent plan for Baby V., and . . . to make such other orders as may be necessary and appropriate." (*Id*. at p. 1119.)

Baby Boy V.'s expansive holding has been called into question. In *In re Vincent M.* (2008) 161 Cal.App.4th 943, 959 (*Vincent M.*), the appellate court remarked that *Baby Boy V.*'s conclusion that the father was entitled to presumed father status, reunification services, and visitation, was dicta. *Vincent M.* disagreed with *Baby Boy V.* to the extent it recognized the father's presumed father status and right to reunification services on the basis that *In re Zacharia D.*, *supra*, 6 Cal.4th 435 held that "a biological father who appears after the end of the reunification period must proceed under section 388 in order to be awarded reunification services." (*Vincent M.*, *supra*, at p. 959.) Under the rationale set forth in *Zacharia D.*, the father in *Baby Boy V.* should not be entitled to reunification services, even if he was a presumed parent, unless he met his burden under section 388. Furthermore, *Baby Boy V.* is inapplicable to father's case; father did not begin to participate in the dependency after the reunification period had ended.

Although it considered a different issue, we find the discussion in *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836 (*Tonya M.*), helpful in our analysis. The jurisdictional and dispositional hearing for the child in *Tonya M.* took place approximately nine months before the six-month review hearing because of various continuances. (*Id.* at p. 841.) At the six month review hearing in August 2006, the court ordered termination of the mother's reunification services and set the matter for a section 366.26 permanency planning hearing in December 2006, after taking into consideration there was no substantial probability the child would be returned to the mother by November 2006, when the court would be required to hold the section 366.21, subdivision (f) hearing or the 12-month review date. (*Tonya M.*, *supra*, at p. 842.) Mother appealed, arguing the juvenile court erred, since it should have considered whether there was a substantial probability the child would be returned to the mother by February 2007, a full six months *after* the six-month review hearing. (*Ibid.*)

The Supreme Court concluded the juvenile court contemplated the correct time period when deciding whether reunification services should be continued. In so doing, the *Tonya M*. court noted that for a child under the age of three years, like the child in *Tonya M*., reunification services should be considered for an extension no less frequently than every six months. (§ 366, subd. (a)(1).) Additionally, "[t]he dependency scheme sets up three distinct periods and three corresponding distinct escalating standards for the provision of reunification services to parents of children under the age of three." (*Tonya M*., *supra*, 42 Cal.4th at p. 845.) "[B]ecause at each subsequent review hearing the court is statutorily obligated to reevaluate the propriety of future services under the new applicable standard for that hearing (§§ 361.5, subds. (a), (b), 366.21, subds. (e)-(g)), *juvenile courts lack the authority to order services extending beyond the next review hearing*." (*Ibid*., italics added.)

"Given this scheme, the most logical interpretation is for the juvenile court at each step to consider for purposes of ordering services only probable developments in the period for which the services can be ordered. That is, the period for which services can be ordered and the period for which the impact of those services is to be prospectively evaluated should be coterminous. Thus, if at most four months remain until the next review hearing (i.e., the 12-month hearing or 18-month hearing), *at most only four months of services can by law be ordered*, and the juvenile court therefore should consider only what impact of *those* four months of services would be on the parent and child, not whether another hypothetical two months of services beyond the next prospective hearing might have a different or additional impact." (*Tonya M*., *supra*, 42 Cal.4th at p. 846, italics added.) "This approach is consistent with the Legislature's directive that periods for reunification services and timing of review hearings are to be determined relative to the child's initial removal into custody or the jurisdictional or

dispositional hearing, not the length of previous services or the dates of previous review hearings." (*Ibid*.)

Although *Tonya M*. considered a different issue, we find its discussion on how periods of reunification are to be set--by the date of the child's initial removal or the jurisdictional or dispositional hearing--applicable here. The timeliness of a review hearing is paramount to a child's stability. Father's request to vacate the 12-month review hearing and set the matter for a six-month review hearing frustrates the goals of the dependency scheme, "diminish[ing] the child's interest in receiving a commitment and a loving home, from whoever is able to provide it, at the earliest possible time." (*Tonya M*., *supra*, 42 Cal.4th at p. 847.) Only seven weeks remained before the next review hearing; therefore, at most, only seven weeks of services could be ordered.

Father does not convince us that a dependency's timelines should be restarted simply because a parent arrives late to the proceedings. "While under normal circumstances a father may wait months or years before inquiring into the existence of any children that may have resulted from his sexual encounters with a woman, a child in the dependency system requires a more time-critical response. Once a child is placed in that system, the father's failure to ascertain the child's existence and develop a parental relationship with that child must necessarily occur at the risk of ultimately losing any 'opportunity to develop that biological connection into a full and enduring relationship.' " (*In re Zacharia D*., *supra*, 6 Cal.4th at p. 452.)

Furthermore, father's argument that the Department could not conceivably give him reasonable services within seven weeks is premature. In order to analyze his claim, we would have to assume that there is some minimum amount of time needed for the Department to provide a parent with reasonable services. Indeed, there may be a minimum. However, what services are reasonable for a particular parent would be wholly dependent on the individual circumstances of each dependency case. We also

cannot conceivably predict how father will perform during the seven weeks of services that will be provided to him by the Department.

If father seeks to argue that he did not receive reasonable services within seven weeks, he would need to raise this argument on a separate appeal from a juvenile court's finding that he *did* receive reasonable services during a future hearing, such as the 12-month review hearing.[5] At that point, "[t]he remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing." (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975.)

Additionally, father argues the burden he faces at the 12-month review hearing will be unreasonable, because at the 12-month review a juvenile court only grants additional services if a parent establishes the child will be returned home by the 18-month review. (§ 361.5, subd. (a)(3).) While we agree that father may have a heightened burden at the 12-month review hearing, this is nonetheless consistent with the statutory timeline set forth under the dependency scheme, which begins with child's entry initial removal. Any increased burden on father's part does not warrant restarting the dependency's timeline, further delaying permanency and stability in child's life.

Lastly, based on the circumstances in this case, the juvenile court's order directing the Department to provide father with seven weeks of reunification services was not an abuse of discretion. Child had already been out of mother's custody for nearly a year. Although father had not been made aware of child's existence until relatively late in the

[5] As indicated earlier, father did challenge the court's finding that he received reasonable services when he filed a writ petition seeking to vacate the order setting the section 366.26 hearing. We denied the petition on the merits.

Additionally, father's claims regarding the reasonableness of services ignores the juvenile court's explanation that it intended to revisit the reunification services issue at the 12-month review hearing. If circumstances required, the juvenile court indicated its willingness to extend reunification services beyond the initial grant of seven weeks.

dependency proceedings, father had his own issues. Father had a long criminal history including convictions for substance abuse. Furthermore, at the time of the initial section 366.26 hearing, father was incarcerated pending charges on a hit and run.

Under these circumstances, father fails to show the juvenile court abused its discretion when it ordered the Department to provide him with seven weeks of reunification services.

DISPOSITION

The juvenile court's order is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.